Nos. 82-1630 and 82-6695

In The

Supreme Court of the United States

October Term, 1983

TED S. HUDSON,
v. *Petitioner,*
RUSSELL THOMAS PALMER, JR.,
Respondent.

and

RUSSELL T. PALMER, JR.,
v. *Cross Petitioner,*
TED S. HUDSON,
Cross Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

ADDENDUM

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EMPLOYEE

STANDARDS OF CONDUCT

COMMONWEALTH OF VIRGINIA

DEPARTMENT OF CORRECTIONS

JULY 1, 1981

STANDARDS OF CONDUCT

These Standards of Conduct are designed to protect the well-being and rights of all employees; to assure a safe, efficient government operation, and to assure compliance with public law.

Many of the Conduct Standards will readily be understood and recognized as those that guide behavior with other people anywhere in social or business relationships. Other standards and procedures are more particularly applicable to employees working together in State government.

This policy is for your use and is intended to keep you informed so that employees as well as supervision will be equally aware of each person's responsibility for maintaining a positive and productive work environment.

* * *

The Standards listed below are intended to be illustrative but not all inclusive of the type of conduct expected from State employees.

Timely and Regular Attendance Performance

Planned lost time should be arranged with supervision in advance. Unexpected lost time should be reported as promptly as possible to supervision at the beginning of the employee's work schedule.

Dependable Application of Time

Employees are expected to apply themselves to their assigned duties during the full schedule for which they are being compensated, except for reasonable time provided to take care of personal needs.

Satisfactory Work Performance

Employees are expected to meet established performance standards. Conditions or circumstances, as they become known, which will prevent employees from performing effectively or from completing their assigned tasks should be reported to supervision. Likewise, unclear instructions or procedures should be brought to the attention of supervision.

CORRECTIVE ACTION PROCEDURES

These procedures are designed to:

A. Establish a fair and objective process for correcting or treating unacceptable conduct,

B. Distinguish between less serious and more serious actions of misconduct and provide corrective action accordingly, and

C. Limit corrective action to employee conduct occurring only when employees are at work or when otherwise representing the Commonwealth in an official or work-related capacity, unless otherwise specifically provided for in this procedure.

Unacceptable conduct shall be divided into three types of offenses according to their severity. Specified corrective action for such offenses shall not be exceeded. However, when in the judgement of the agency personnel officer and/or the appointing authority mitigating circumstances exist, specified corrective action may be reduced. (See Mitigating Circumstances page 6)

FIRST GROUP OFFENSES include those types of behavior less severe in nature, but which require correction in the interest of maintaining a productive and well managed work force.

A supervisor should first discuss a first group offense situation with the employee and advise the employee of the need for correction. If the condition is not corrected, the employee should be given a written notice (Form 1) to again indicate to the employee the need for correcting the stated offense.

Active written notices for First Group Offenses shall be cumulative in nature. Such written notices for purposes of corrective action shall remain "active" until 12 months have elapsed since the issuance of the last written notice.

The accumulation of active written notices regardless of the nature of the first group offenses should result in suspension without pay on the third active notice, but such suspension shall not exceed three work days. A fourth active written notice will normally result in removal.

First Group Offenses

- Unsatisfactory attendance performance or excessive tardiness.
- Abuse of State time, such as:

Unauthorized time away from work area or Failure to notify supervisor promptly of completion of assigned work.

- Obscene or abusive language.
- Conviction of a moving traffic violation while using State or other public use vehicles.
- Inadequate or unsatisfactory job performance.

SECOND GROUP OFFENSES include acts and behavior which are more severe. Corrective action for these offenses include a written notice (Form 1) and suspension without pay. Employees, however, may not be suspended in excess of five work days for an offense of this nature. An additional Second Group Offense should normally result in removal. A single offense, coupled with three "active" First Group Offenses, should also normally result in removal.

Second Group Offenses

- Failure to follow supervisor's instructions, perform assigned work or otherwise comply with applicable established written policy.
- Violating safety rules where there is not a threat to life.
- Reporting to work when under the influence of or when ability is impaired by alcohol or the unlawful use of controlled substances.
- Leaving the work site without permission during working hours.
- Failure to report to work without proper and timely notice to supervisor in accordance with written policy.
- Unauthorized use or misuse of State property or records.
- Refusal to work required overtime.

THIRD GROUP OFFENSES include acts and behavior of such a serious nature that a first occurence should normally warrant removal.

Third Group Offenses

- Absence in excess of three days without call in or notice to supervisor.
- Falsifying any records, such as, but not limited to: vouchers, reports, insurance claims, time records, leave records, or other official State documents.
- Willfully or negligently damaging or defacing State records or State or employee property.
- Theft or unauthorized removal of State records or State or employee property.
- Gambling while on duty.
- Acts of physical violence or fighting.
- Violating safety rules where there is a threat to life.
- Sleeping during working hours.
- Participating in any kind of work slowdown, sitdown, or similar concerted interference with State operations.
- Unauthorized possession or use of firearms, dangerous weapons or explosives.
- Criminal convictions for acts of conduct occurring on or off the job which are plainly related to job performance or are of such a nature that to continue the employee in the assigned position could constitute negligence in regard to the agency's duties to the public or to other State employees.
- Leaving a security post without permission during working hours.
- Use of alcohol or unlawful use or possession of controlled substances while on the job.
- Gross negligence on the job which results in the escape, death or serious injury of a ward of the state or the death or serious injury of a state employee.
- Refusal to obey instructions which could result in a weakening of security.
- Physical abuse or other abuse, either verbal or mental, which constitutes serious maltreatment of inmates or wards.

ADDITIONAL SUSPENSION PROVISIONS

In addition to the suspensions provided for above, suspensions without pay may occur for the following reasons, subject to the limitations noted.

A. Suspension Pending Agency Disciplinary Investigation

When a suspension is effected pending completion of a disciplinary investigation into misconduct or violation of established work rules, such suspension shall not exceed 10 work days.

If the employee is cleared of any such alleged violations, the employee shall be reinstated and paid for this period of suspension. Where no finding of violation or decision on disciplinary action occurs within 10 work days, the employee shall be permitted to return to work pending a final decision.

If the appointing authority decides disciplinary action involving suspension is warranted, the period of suspension pending completion of the investigation shall apply to the period of disciplinary suspension.

B. Suspension — Disciplinary Penalty

Suspension for First and Second Group Offenses is provided for elsewhere in this Policy. However, suspension in lieu of removal shall not exceed 10 work days.

C. Suspension Pending Court Action or Official Investigation.

The 10-day time limitation shall not apply when an employee is suspended pending completion of court action or an official investigation, provided such court action or official investigation involves alleged criminal violations that occur on or off the job and are plainly related to job performance or are of such a nature that to continue the employee in the assigned position could constitute negligence in regard to the agency's duties to the public and to other State employees. Upon completion of such court action or official investigation, the employee may be disciplined or removed or may be reinstated with full or partial back pay as the appointing authority determines to be appropriate under the circumstances. ("Official Investigation" shall be limited to interpretation to those investigations conducted by State Police and/or other Federal, State, or local government law enforcement agencies.)

* * *

Notice to Employee: Prior to suspension or removal actions, an employee shall be informed by the agency of the reasons for the suspension or removal, and be given a reasonable opportunity to respond to those reasons. An employee may be immediately suspended or removed, however, where the employee's continued presence may be a substantial threat to the welfare of the agency or fellow employees. In such cases, the employee shall be informed of the reasons for such suspension or removal as soon as possible thereafter and shall then be given a reasonable opportunity to respond to those reasons. A written notice (Form 1) confirming the cause and nature of the suspension or removal actions shall be provided to the employee either before or promptly following such actions.

All written notices shall include a reference to the employee's right to file a grievance.

Personnel Officers' Responsibility: Agency or facility personnel officers shall be responsible for the review of all corrective actions involving suspension and/or removal to determine if mitigating circumstances exist which would otherwise justify modified corrective action and, in appropriate cases, referral to the State Employee Assistance Service. Thereafter, personnel officers shall be responsible for making appropriate recommendations to the appointing authority.

Management Responsibility: Management is responsible to assure that corrective actions are timely, and consistently applied. Moreover, effective corrective action requires that "actions" rather than "personalities" be the subject of fair and objective corrective actions.

Agency Responsibility: Agencies may from time to time supplement this Policy to meet agency oriented needs subject to the prior written approval of the State Director of Personnel and Training. State agencies must insure that all agency employees receive a copy of these conduct rules and any approved supplements and that such rules are included in future issues of the agency's employee handbook.

Use of Grievance Procedure: Employees may use the State grievance procedure on any matters related to the application of this Policy.

State Employee Assistance Service: Referral to this program shall not be considered a substitute for corrective action for a violation of the above offenses. However, prior to the need for corrective action or, in addition to corrective actions provided for in this Policy it is recommended that supervisors refer employees to SEAS where appropriate.

Coverage of Personnel: This Policy applies to employees covered under the Virginia Personnel Act and the employees of local offices of Emergency Services and local Offices of Aging.

Probationary Employees: The above disciplinary procedures do not apply to probationary employees, inasmuch as it is recognized that the failure of the probationary employee to meet conduct standards is grounds for immediate removal.

Mitigating Circumstances: Mitigating circumstances include those conditions related to a given offense that would otherwise serve to support a reduction of corrective action in the interest of fairness and objectivity. Mitigating circumstances may also include consideration of an employee's long service with a history of otherwise satisfactory work performance.

Relationship to Existing Policies: Supersedes Rule 11.3 and 11.5 of the Rules for the Administration of the Virginia Personnel Act and the Commonwealth's Personnel Policy on Standards of Conduct distributed December 13, 1978. This revised Policy shall constitute rules and regulations issued pursuant to the authority provided in Section 2.1-114.5(J) of the Code of Virginia.

Effective Date: July 1, 1981

The offenses listed in this Policy are not intended to be all inclusive. Accordingly, conduct which in the judgement of the Agency Head, although not listed, seriously undermines the effectiveness of the agency's activities or the employee's performance should be treated consistent with provisions of this Policy. A record of such corrective actions must be filed with the State Director of the Department of Personnel and Training, within 10 work days of such action.

WRITTEN NOTICE (Form 1)

Section I

Employee's Name _____ Date of Offense _____

Agency _____ Date of Notice _____

Supervisor's Signature _____

Section II

Type of Offense: (Check one)

Group One ☐ Group Two ☐ Group Three ☐

Nature of Offense: (Describe Briefly)

_____

_____

Section III

Corrective Action(s): In view of the above offense, you are being issued this written notice and _____

(Describe suspension or removal action, if applicable) _____

Section IV*

It is expected that the condition noted above will be corrected immediately. In the event this condition is not corrected, or another offense of this type occurs, the following corrective action may be taken:

Check One
- ☐ Written Notice
- ☐ Written Notice and Suspension Up to 3 Days
- ☐ Written Notice and Suspension Up to 5 Days
- ☐ Written Notice and Removal

* Section IV is not applicable and should not be completed when the corrective action described in Section III is removal.

NOTE: Any employee wishing to appeal the corrective action noted may use the State grievance procedure for this purpose.

AN EQUAL OPPORTUNITY EMPLOYER

DEPARTMENT OF CORRECTIONS
COMMONWEALTH OF VIRGINIA
RICHMOND

DEPARTMENT POLICY

Chapter:	Number:
4—GENERAL ADMINISTRATION	Page: 1 of 10
Subject: Inmate Grievance Procedures	
Date: October 12, 1982	Supersedes: First Issue

4-14.1 PURPOSE: To provide fair and prompt decisions and actions in response to inmate complaints; to provide a regularly available channel for hearing and resolving grievances and concerns of inmates; to provide a mechanism to help keep managers informed and better able to carry out the Department's mission; and to meet national standards, the following policy is hereby established.

4-14.2 DEFINITIONS. (a) An "inmate" is an adult who has been placed in the care of the Department for custody and/or supervision.

(b) "Unit head" means the person in charge of an institution, or other organizational unit of the Department.

(c) "Unit" means an organizational unit of the Department, including adult correctional institutions, field units, and work release units.

(d) "Staff grievance coordinator" means an employee of the unit, appointed by the Superintendent or Warden, who oversees the functioning of the unit's inmate grievance procedure.

4-14.3 ADULT INSTITUTIONAL INMATE GRIEVANCE PROCEDURES. (a) Each correctional unit shall develop an Institutional Operating Procedure (IOP) for inmate grievances that conforms to this policy, and shall submit the proposed procedure to the Regional Administrator, Deputy Director, and Director for approval. (See the Appendix (Attachment #1) to this policy for detailed instructions.)

(b) All grievance procedures shall conform to the Minimum Standards for Inmate Grievance Procedures promulgated pursuant to the Civil Rights of Institutionalized Persons Act, Pub. L. 96-247, 94 Stat. 343 (42 U. S. C. 1997), and shall include the following provisions:

(1) Compliance with standards; formulation. Inmates and employees shall be afforded an advisory role in reviewing the compliance with the Federal minimum standards of an institutional grievance procedure adopted prior to the effective date of the Federal standards. Inmates and employees shall be afforded an advisory role in the formulation and implementation of a grievance procedure adopted after the effective date of the Federal regulations.

4-14.3 This may be accomplished in one of the following ways:

/a/ Review by a committee of at least three inmates and

4-14.3

three employees, in equal numbers. The inmate population must have some choice in the selection of the inmate members. The unit head may appoint the employees, at least one of whom must be at line level and all of whom must have regular contact with inmates.

/b/ A draft of the Institutional Operating Procedure and a copy of the aforementioned Minimum Standards shall be posted for a minimum of one week in an accessible location or locations for employees and inmates. Both groups shall have the opportunity to submit written comments to the unit head, who shall review them and make changes in the IOP as appropriate. Upon submission of the IOP to the Regional Office, copies of all such comments received shall be enclosed.

(2) Communication of Procedures. A written notification of the inmate grievance procedures shall be given to each inmate upon his/her arrival at a reception and classification center or the Virginia Correctional Center for Women. The written grievance procedures shall be readily available for review in locations accessible to the inmate and copies shall be made available upon request. Additionally, upon arrival at each institution or unit, each inmate shall receive written notification of the policy. In both situations, the notification shall contain information regarding:

/a/ how to obtain a grievance form;

/b/ location where grievance policy and IOP may be reviewed;

/c/ time and date of the next scheduled orientation, which shall occur within seven (7) calendar days of the inmate's arrival at the facility. (See Appendix to this policy for a model notification) (Attachment #2)

In the event that an inmate wishes to file a grievance prior to participation in the formal orientation, provisions shall be made for staff to provide assistance so that the inmate's ability to grieve an issue is in no way hindered.

At the orientation at the reception center and the institutions, time shall be allocated for a question and answer period, and provisions shall be made for those not speaking

4-14.3

English, as well as for the impaired and handicapped.

Each employee shall be provided a copy of this policy and the unit/institution grievance IOP during or prior to the first day of employment at the facility. Additionally, within seven calendar days of arrival at the institution, each employee shall receive an oral explanation of the procedure, including the opportunity to have questions regarding the procedure answered orally. Appropriate provisions shall be made for those not speaking English, as well as for the impaired and handicapped.

Additional copies of this policy shall be maintained at each facility and shall be available to inmates and employees upon request.

(3) Accessibility; reprisals. Each inmate shall be entitled to invoke the grievance procedure regardless of any disciplinary, classification, or other administrative or legislative decisions to which the inmate may be subject. The procedure shall be accessible to impaired and handicapped inmates.

No reprisals, either formal or informal, shall be visited upon inmates for filing grievances, or to employees and inmates participating in the resolution of grievances.

(4) Written responses with reasons. At each level of the procedure responses to each grievance shall be made in writing, with reasons for the decisions taken stated clearly.

(5) Time limits. Prompt, reasonable time limits shall be set for all levels of the procedure, with provisions for emergencies and special problems of confidentiality. The total time allowed from initial submission to the last level of review shall not exceed 90 calendar days, unless the grievant agrees in writing to an extension for a fixed period. Maximum time limits for each level are specified below in 4-14.7.

(6) Inmate-employee participation. Inmates and employees must participate in an advisory capacity in the design, operation, and evaluation of institutional grievance procedures including a review of both their effectiveness and

4-14.3 credibility. Inmates may also be involved in grievance intake; provided, however, that no inmate shall be authorized to prevent any other inmate's grievance from being submitted; and provided that only those inmates directly involved in serving on grievance committees shall be allowed access to grievance records. The staff grievance coordinator shall provide appropriate supervision to insure both the confidentiality of grievance records, and the integrity of the intake process.

No inmate or employee who appears to be involved in the matter shall participate in an advisory capacity in the resolution of the grievance, except as a witness if necessary. No inmate shall participate in the resolution of a grievance over the objection of the grievant.

4-14.4 GRIEVABILITY. (a) Grievable. The following matters shall be grievable by inmates:

(1) The substance, interpretation, and application of policies, rules, and procedures of the unit, region, division, and department.

(2) Individual employee and inmate actions, including any denial of access of inmates to the grievance procedure.

(3) Reprisals against inmates or staff for filing a grievance or appeal under the inmate grievance procedure, or for participating in an inmate grievance proceeding.

(4) Any other matter relating to conditions of care or supervision within the authority of the Virginia Department of Corrections, except as noted herein.

(b) Non-grievable. The following matters are not grievable:

(1) State and Federal court decisions;

(2) State and Federal laws and regulations;

(3) Parole Board decisions;

4-14.4 (4) Adjustment Committee decisions, since they may be appealed through another procedure; and

(5) Other matters beyond the control of the Department.

(c) Resolving Grievability. If a grievance is ruled non-grievable at any level, that decision may be appealed through the remaining levels of the grievance procedure.

4-14.5 REMEDIES. The grievance procedure shall afford a successful grievant a meaningful remedy. Although available remedies may vary among institutions, a reasonable range of meaningful remedies in each institution is necessary. Remedies must include, but not be limited to, the following:

(a) Substance of policy, rule, or procedure--written change communicated effectively, promptly, and as extensively as necessary, with instructions for effecting the change if necessary.

(b) Interpretation of policy, rule, or procedure--written explanation of revised interpretation communicated effectively, promptly, and as extensively as necessary, with instructions for effecting the change if necessary.

(c) Application of policy, rule, or procedure--written direction to the relevant employee or employees to apply the policy, rule, or procedure correctly, with instructions for accomplishing the change, if necessary.

(d) Individual employee action or reprisal--indication to inmate that grievance was founded; disciplinary actions against employees, if necessary, shall not be communicated to inmate, but shall be documented.

(e) Individual inmate actions--protection of the grievant, if necessary through re-assignment of one or both parties or through other means; care that action taken does not have the effect of reprisal against the grievant; redress to the grievant as appropriate (e.g., return of stolen property).

(f) Classification grievances--appropriate and prompt classification action (e.g., transfer, reduction of custody, award of furlough, change of work assignment).

4-14.5 (g) Time computation--prompt re-computation with expedited processing of any privileges or improvement in status (e.g., eligibility for reduced custody), if relevant.

(h) Loss of inmate property within the custody and control of the unit--return of property, replacement of property of equal value at time of loss, or monetary payment equal to value of property at time of loss.

(i) Living conditions and facilities--prompt improvement.

4-14.6 LEVELS OF REVIEW. Any inmate who is dissatisfied with the response to a grievance at any level may appeal his/her grievance to the next level, within the requirements set forth below. Appeals shall be allowed automatically without interference by administrators or employees of the institution. Each response shall also state that the grievant is entitled to appeal, if it is available, and shall contain simple directions for making that appeal. Each grievance procedure for inmates shall reflect the following levels of review:

Level 1--Inmate/employee participation. This may be further divided into informal and formal phases. Inmate/employee participation may occur for all grievances except those that are highly confidential, and must occur for all grievances questioning or challenging general policy or practices at any level. In any instance in which inmates and employees are afforded an advisory role in the disposition of an individual grievance, the opportunity for such participation shall occur before the initial adjudication of the grievance.

Inmate/employee participation must take one of the following forms:

(a) formally established inmate-employee grievance committees, in which the inmate population has some choice in the selection of inmate members; the unit head may appoint the employees, at least one of whom must be at line level and all of whom must have regular contact with inmates;

(b) review by existing Inmate Advisory Committees, as well as by a committee of employees who may be selected by the unit head, at least one of whom must be at line level and all of whom must have regular contact with inmates;

4-14.6 (c) review by an ad hoc committee of inmates and employees empaneled solely for review of a particular grievance, chosen as in (a) above;

(d) solicitation of comments in general population meetings and in employee meetings;

(e) solicitation of written comments by inmates and employees on posted or published abstracts of grievances, with adequate time for review and response.

All recommendations at this level shall be forwarded to the

Superintendent/Warden within the time specified in 4-14.7.

Level 2--Superintendent/Warden.

Level 3--Regional Administrator, OR, for grievances against decisions or policies by Central Classification, Central Records, or Central Parole units, the Assistant Director for Classification and Parole Administration. Except as specified below, this is the last level of appeal.

Level 4--Deputy Director/Director. Grievances appealed to Level 4 will be responded to by either the Deputy Director or the Director (but not both), as appropriate. Only grievances questioning or challenging general policy or procedure of the Division of Adult Services or emergency grievances requiring action at this level are appealable to the Deputy Director. Only grievances questioning or challenging general policy or procedure of the Department of Corrections or emergency grievances requiring action at this level are appealable to the Director.

4-14.7 TIME LIMITS. (a) Responses shall be made within fixed time limits at each level of decision. Time limits may vary among institutions, except as indicated below, but expeditious processing of grievances at each level of decision is essential to prevent grievances from becoming moot. Expiration of a time limit at any stage of the process shall entitle the grievant to move to the next stage of the process, unless the grievant has agreed in writing to an extension of the time for a response.

4-14.7 (b) Time limits shall be considered as beginning the date of receipt of the grievance at each level.

(c) Time limits for each level shall not exceed the following:

Level 1--fifteen (15) calendar days;

Level 2--eight (8) calendar days;

Level 3--twenty (20) calendar days;

Level 4--fifteen (15) calendar days.

(d) The grievant shall be allowed five (5) calendar days upon receipt of a response to appeal to the next level, if such appeal is available.

4-14.8 EMERGENCY GRIEVANCES. Special provisions shall be made for responding to grievances of an emergency nature.

(a) Definition. Emergency grievances shall be defined as matters regarding which disposition according to the regular time limits would (1) subject the inmate to a substantial risk of personal injury; (2) cause other serious and irreparable harm to the inmate; or (3) remove the attainability of the requested action.

If a grievance submitted as an emergency is ruled at any level not to be an emergency, it shall be returned to the grievant specifying that fact, with reasons. The response shall indicate that the grievability decision may be appealed to Level 3, and that the grievance may be re-submitted as a regular grievance.

(b) Procedure. Emergency grievances shall be forwarded immediately, without substantive review, to the level at which corrective action can be taken. It shall be the duty of the unit head or designee to determine to what level the grievance must be forwarded if substantive action must occur beyond the level of the unit head. It shall be the duty of all correctional employees to forward the emergency grievance in expedited fashion to the appropriate level within the institution.

Like other grievances, emergency grievances normally shall be appealable to Level 3. If substantive action is required beyond Level 2, no appeal shall be permitted beyond the level of substantive action.

4-14.8 (c) Time limits. Emergency grievances that may receive substantive action within the institution must receive a written response within eight (8) hours. Emergency grievances requiring a substantive response beyond the institution or appealed to Level 3 must receive a written response within five (5) working days and a telephone response in two (2) working days. Emergency grievances that will be mooted by the passage even of the time limits specified for emergency grievances must receive verbal or telephone responses prior to that time.

4-14.9 OPERATION. (a) Initiation. The procedure for initiating a grievance shall be simple and include the use of a standard form. Necessary materials shall be freely available (i.e., upon request) to all inmates at all waking hours and, if the grievant indicates a desire to file an emergency grievance, at all hours of the day and night. Assistance shall be readily available for inmates who cannot complete the forms themselves. Forms shall not demand unnecessary technical compliance with formal structure or detail, but shall encourage a simple and straightforward statement of the inmate's problem and requested resolution. (See Attachment #3 for example.)

(b) Review. The grievant may request review or appeal at any level that it is available as defined by this policy. Any request for review shall be allowed automatically without interference and shall be conducted without influence or interference by administrators or employees of the institution.

4-14.10 RECORDS. (a) Nature. Records regarding the filing and disposition of grievances shall be collected and maintained systematically by the institution. Such records shall include:

(1) a log showing the name and number of the grievant, dates of initial submission and of response at each level, type of problem grieved, and level of resolution;

(2) a completed data form for each resolved grievance that is filled out at the unit and forwarded to the Regional Office on a monthly basis.

(b) Record Retention. Copies of each completed grievance shall be maintained at the unit for a minimum of three years.

(c) Record Location. No copies of grievances or adverse reference to any grievance shall be placed in an inmate's official unit or central file.

4-14.10 (d) Confidentiality. Records regarding the participation of an individual in grievance proceedings shall not be available to employees or other inmates, except to the extent that access for clerical processing of records is necessary, and that employees who are participating in the disposition of a grievance shall have access to records essential to the resolution of the grievance.

4-14.11 MONITORING AND EVALUATION. (a) Unit grievance procedures shall be monitored regularly by Regional Grievance Coordinators, through personal visits, records and computer printout reviews, and questionnaires.

(b) An annual evaluation of the grievance procedure shall be conducted by the Division of Program Development and Evaluation.

(c) Each correctional institution shall conduct its own internal evaluation of its grievance procedure prior to the annual evaluation. Inmates and employees shall be afforded an advisory role in this evaluation, which shall include a review of both the effectiveness and the credibility of the grievance procedure.

4-14.12 REFERENCES.

American Correctional Association and Commission on Accreditation for Corrections, Standards:

2-4343 (Adult Correctional Institutions)

Virginia Department of Corrections, Division of Adult Services Guidelines:

846	3-13-77	Inmate Grievance Procedure
861	11-29-77	Inmate Discipline

Public Law 96-247, 94 Stat. 349 (42 U.S.C. 1997) Civil Rights of Institutionalized Persons Act, 1980.

Minimum Standards for Inmate Grievance Procedures (promulgated under P.L: 96-247) Federal Register Document 81-28587 Filed 9-30-81 dated September 25, 1981, U. S. Attorney General W. F. Smith.

R. K. Procunier
Director of Corrections

VISION OF ADULT SERVICES GUIDELINE

COMMONWEALTH OF VIRGINIA

DEPARTMENT OF CORRECTIONS

GUIDELINE NUMBER	DATE
846	March 31, 1977

SUBJECT

INMATE GRIEVANCE PROCEDURE

I. PURPOSE

An inmate grievance procedure is hereby established to provide inmates with an administrative method for the settlement of grievances they have relating to their imprisonment. A grievance is a formal complaint concerning an incident, policies, or conditions within individual institutions or within the Division. This grievance procedure has two broad objectives: 1) to give inmates a regularly available channel for the expression of their grievances, and 2) to foster prompt solutions to institutional problems in a regulated, orderly fashion.

It is expected that most grievances can be resolved more quickly to the benefit of all concerned by use of this guideline, which provides for direct contact with the staff responsible in the particular area of a specific grievance. Prompt attention to an inmate complaint by the staff at each institution will insure that each complaint will receive complete and immediate response, thereby contributing to the furtherance of better inmate-staff communication.

II. ADMINISTRATIVE PROCEDURE

Grievance and Appeal forms will be made available, in duplicate, to every inmate upon request. A copy of the form to be used in grievance procedures is attached to this guideline. To begin a complaint, an inmate must fill out and submit a grievance and appeal form within a reasonable time after any incident which given rise to a grievance. If the complaint involves a continuing policy or condition of the institution or Division, the grievance and appeal form may be filled out and submitted at any time. The inmate should keep one copy for his reference. The narrative of the complaint should contain a complete and specific account of the inmate's complaint, including the names of the people involved, date and location of the incident or condition complained of, and the remedy the inmate seeks. The grievance and appeal form will then be placed in a sealed envelop and submitted to the staff member responsible for the first step in this grievance procedure.

Proper Channels for Submissions of Grievances

a. The inmate shall submit his grievance to the Superintendent, or Officer-in-Charge of the Institution or Field Unit to which he is assigned. The Superintendent or the Officer-in-Charge of the institution or field unit to which the inmate is assigned, or in their absence, a designee, will have

eight (8) calendar days within which to respond to the complaining inmate on the answer section of the grievance and appeal form.

b. The Superintendent or his designee will have the responsibility of interviewing the inmate, determining the nature of the inmate complaint, and investigating the complaint (to include a hearing when necessary). In arriving at his decision, the Superintendent may designate an uninvolved individual to be responsible for gathering any information, conducting an investigation or holding a hearing in order to provide the Superintendent with the necessary facts upon which to base an acceptable, objective decision in each individual's case.

c. If the decision is contrary to the remedy the inmate seeks, he will be informed of his right to appeal. If the inmate does object to the Superintendent's decision and desires to appeal to a higher authority, the inmate must so indicate by signing the objection and appeal statement located on the Grievance and Appeal form immediately below the space provided for the Superintendent's response. Once the inmate has noted his objection to the decision and his desire to appeal it, a copy of the Superintendent's decision will then be forwarded automatically to the Deputy Director of Adult Services, who is charged with the authority and responsibility for making the final determination in all cases where the complaining inmate has appealed the Superintendent's decision. The Deputy Director shall respond for the Director of Adult Services as his designee and his response shall constitute the final determination in the appeal process.

d. A copy of any grievance submitted to the Officer-in-Charge of a correctional field unit will also be sent, but only for reference purposes, to the Superintendent of the Region. The Superintendent of the Region will not act on these grievances but will be furnished with a copy of each grievance so that he might be kept informed as to the nature of inmate complaints and institutional responses from those units under his supervision.

e. The Superintendent will have the necessary authority to resolve inmate complaints filed pursuant to this Guideline. The dated response of the Superintendent will indicate what action has been taken and briefly state the reasons for his disposition of the case. Two copies of the Superintendent's response shall be given to the complaining inmate.

Appeal of Superintendent's Decision: Deputy Director's Action.

a. Once the Superintendent has submitted his decision to the Deputy Director, the Deputy Director will have fifteen (15) calendar days within which to reach a decision. In arriving at his decision, the Deputy Director may interview the inmate,

determine the continuing nature of the complaint, and investigate the complaint (to include a hearing when necessary). The Deputy Director will indicate his decision and the reasons for such decision in writing to both the Superintendent of the Institution or Officer-in-Charge of the respective Field Unit and the complaining inmate. Again, the decision of the Deputy Director will be final in all respects to the grievance.

b. In the event more time is required to conduct a hearing or a more formal investigation, the Deputy Director, or his designee may extend the time for good cause shown; however, the total time from initial submission of the grievance, until final action by the Deputy Director will not exceed thirty (30) days.

c. In the event a hearing or an investigation is conducted, the grievance form will show that witnesses were interviewed and a brief summary of their testimony.

d. No action will be taken against any inmate as a result of his using the grievance procedures established herein.

III. GENERAL

a. The grievance and appeal form is to be completed by the inmate, sealed in an envelope and delivered to the Superintendent, or designated Officer-in-Charge, who is responsible for the initial investigation and appropriate action of the complaint.

b. The inmate will be provided with a receipt when he submits his complaint to the responsible staff member. Attached is a copy of the receipt form to be used in this grievance procedure. One copy of the receipt will be given to the inmate and one copy will be forwarded with his complaint through the entire grievance procedure.

c. A completed copy of the grievance and appeal form, to include the final decision will be filed in the inmate's record folder at the Central Records Office, and at the institution and/or field unit where he is assigned.

d. Time computation under this guideline will be that the day of receipt of an inmate grievance form will be counted as the first day of the required answering time. Weekends are included. Prompt attention to each complaint will be the rule under this guideline.

e. The complaining inmate will be informed of his right to appeal to the next higher step in the procedure if he is dissatisfied with the decision at a lower level. Once the complaining inmate notes an appeal, a copy of the decision rendered by the staff member will automatically be forwarded to the next step in this procedure. Each staff member

involved in this procedure is responsible for insuring that all applicable documentation is forwarded to the proper staff member in the next higher step of this procedure when the complaining inmate notes an appeal.

f. The Deputy Director in this grievance procedure will not act upon a grievance until a staff member in the lower level of this procedure has acted on the grievance of the inmate, noted that action taken and an appeal has been noted.

IV. SUPERSESSION

This guideline supersedes Division Guideline No. 846, "Inmate Grievance Procedure" dated November 1, 1974.

Robert M. Landon
Director
Division of Adult Services

GRIEVANCE AND APPEAL FORM

(Refer to Guideline #846 for Procedures)

NAME (last, first, m.i.)	NUMBER	INSTITUTION	LIVING UNIT

PART I: INMATE'S STATEMENT

What is your complaint?

What action do you want?

Signature: _____ Date: _____

PART II: SUPERINTENDENT'S RESPONSE

(To be completed and returned within 8 calendar days)

Signature: _____ Date: _____

PART III: INMATE'S APPEAL

I am not satisfied with the Superintendent's response because:

Signature: _____ Date: _____

PART IV: DEPARTMENT'S RESPONSE
(To be completed and returned within 15 calendar days)

A. Ombudsman's Report (Optional)

Signature: _____ Date: _____

B. Regional Administrator's Response

Signature: _____ Date: _____

Office of the Attorney General
Washington, D. C. 20530

December 14, 1982

R. K. Procunier
Director
Department of Corrections
Commonwealth of Virginia
P.O. Box 26963
Richmond, Virginia 23261-693

Dear Mr. Procunier:

We have reviewed the November 12, 1982 resubmission of Virginia's application for certification of its inmate grievance procedure. It is my pleasure to inform you that the Virginia procedure is in substantial compliance with the Standards.

Accordingly, pursuant to authority conferred by Title 42, United States Code, Section 1997(e) and Part 40 of Title 28, Code of Federal Regulations, I hereby certify that the Virginia Department of Corrections Inmate Grievance Procedure submitted for our review on November 12, 1982 is in substantial compliance with the Standards set forth in Part 40 of Title 28, Code of Federal Regulations. Since the Virginia procedure has been in effect for less than a year, this certification is conditional as defined in the Standards. This certification is effective for one year from the date of this letter or until full certification is granted, whichever period is shorter. Full certification may be granted when the procedure is found to be in substantial compliance with the Standards and has been in effect for more than a year.

I congratulate you and your staff for developing the first inmate grievance procedure to be certified under the Standards.

Sincerely,

William French Smith
Attorney General